Supreme Court of the United States.

No. 225.—October Term, 1903.

Isabella Gonzales, Appellant, vs. William Williams, United States Commissioner of Immigration at the Port of New York.	Appeal from the Circuit Court of the United States for the Southern District of New York.

[January 4, 1904,]

Mr. Chief Justice Fuller delivered the opinion of the Court:

This is an appeal by Isabella Gonzales from an order of the Circuit Court of the United States for the Southern District of New York, dismissing a writ of *habeas corpus* issued on her behalf, and remanding her to the custody of the United States Commissioner of Immigration at the Port of New York. 118 Fed. Rep. 941.

Isabella Gonzales, an unmarried woman, was born and resided in Porto Rico, and was an inhabitant thereof on April 11, 1899, the date of the proclamation of the Treaty of Paris; she arrived at the Port of New York from Porto Rico, August 24, 1902, when she was prevented from landing and detained by the Immigration Commissioner at that port as an "alien immigrant," in order that she might be returned to Porto Rico if it appeared that she was likely to become a public charge.

If she was not an alien immigrant within the intent and meaning of the act of Congress entitled "An act in amendment to the various acts relative to immigration and the importation of aliens under contract or agreement to perform labor," approved March 3, 1891, 26 Stat. 1084, c. 551, the commissioner had no power to detain or deport her, and the final order of the Circuit Court must be reversed.

The act referred to contains these provisions:

"That the following classes of aliens shall be excluded from admission into the United States, in accordance with the existing acts regulating immigration, other than those concerning Chinese laborers: All idiots, insane persons, paupers or persons likely to become a public charge. . . .

"Sec. 8. That upon the arrival by water at any place within the United States of any alien immigrants it shall be the duty of the commanding officer and the agents of the steam or sailing vessel by which they came to report the name, nationality, last residence, and destination of every such alien, before any of them are landed, to the proper inspection officers, . . . All decisions made by the inspection officers or their assistants touching the right of any alien to land, when adverse to such right, shall be final unless appeal be taken to the Superintendent of Immigration, whose action shall

be subject to review by the Secretary of the Treasury. It shall be the duty of the aforesaid officers and agents of such vessel to adopt due precautions to prevent the landing of any alien immigrant at any place or time other than that designated by the inspection officers, and any such officer or agent or person in charge of such vessel who shall either knowingly or negligently land or permit to land any alien immigrant at any place or time other than that designated by the inspection officers, shall be deemed guilty of a misdemeanor . . ."

"SEC. 10. That all aliens who may unlawfully come to the United States shall, if practicable, be immediately sent back on the vessel by which they were brought in. . . .

"SEC. 11. That any alien who shall come into the United States in violation of law may be returned as by law provided, . . ."

The treaty ceding Porto Rico to the United States was ratified by the Senate, February 6, 1899; Congress passed an act to carry out its obligations March 3, 1899; and the ratifications were exchanged and the treaty proclaimed April 11, 1899, 30 Stat. 1754. Then followed the act entitled "An act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes," approved April 12, 1900. 31 Stat. 77, c. 191. The treaty provided:

"Article II.

"Spain cedes to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and the island of Guam in the Marianas or Ladrones.

"Article III.

"Spain cedes to the United States the archipelago known as the Philippine Islands, and comprehending the islands lying within the following line. . . ."

"Article IX.

"Spanish subjects, natives of the Peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty, may remain in such territory or may remove therefrom, retaining in either event all their rights of property, including the right to sell or dispose of such property or of its proceeds; and they shall also have the right to carry on their industry, commerce and professions, being subject in respect thereof to such laws as are applicable to other foreigners. In case they remain in the territory they may preserve their allegiance to the Crown of Spain by making, before a court of record, within a year from the date of the exchange of ratifications of this treaty, a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside.

"The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress."

By the constitution of the Spanish monarchy and the Spanish Civil Code, in force in Porto Rico when the treaty was proclaimed, persons born in Spanish territory were declared to be Spaniards, but Porto Ricans who

were not natives of the Peninsula, remaining in Porto Rico, could not, according to the terms of the treaty, elect to retain their allegiance to Spain. By the cession their allegiance became due to the United States, which was in possession and had assumed the government, and they became entitled to its protection. The nationality of the island became American instead of Spanish, and by the treaty, Peninsulars, not deciding to preserve their allegiance to Spain, were to be "held to have renounced it and to have adopted the nationality of the territory in which they may reside."

Thereupon Congress passed the act of April 12, 1900. That act created a civil government for Porto Rico, with a Governor, Secretary, Attorney General, and other officers, appointed by the President, by and with the advice and consent of the Senate, who, together with five other persons, likewise so appointed and confirmed, were constituted an executive council, at least five of whom should be "native inhabitants of Porto Rico;" and local legislative powers were vested in a legislative assembly, consisting of the executive council and a house of delegates to be elected.

The Attorney General, the Treasurer, the Auditor, the Commissioner of the Interior, the Commissioner of Education were to make report through the Governor to the Attorney General of the United States, the Secretary of the Treasury of the United States, and so on, to be transmitted to Congress; and all laws enacted by the legislative assembly were to be reported to Congress, which reserved the power to annul the same.

Courts were provided for, and, among other things, Porto Rico was constituted a judicial district, with a district judge, attorney and marshal, to be appointed by the President for the term of four years. The district court was to be called the District Court of the United States for Porto Rico, and to possess, in addition to the ordinary jurisdiction of District Courts of the United States, jurisdiction of all cases cognizant in the Circuit Courts of the United States. And writs of error and appeals might be brought and taken from and to the Supreme Court of the United States.

Provision was also made for the election of a commissioner to the United States, to be paid a salary by the United States, but no person was eligible to such election "who is not a *bona fide* citizen of Porto Rico, who is not thirty years of age, and who does not read and write the English language."

By section 9 regulations were to be made "for the nationalization of all vessels owned by the inhabitants of Porto Rico;" by section 14 the statutes of the United States were generally put in force in the island; by section 16 judicial process was to run in the name of the President of the United States.

By section 7 the inhabitants of Porto Rico, who were Spanish subjects on the day the treaty was proclaimed, including Spaniards of the Peninsula

who had not elected to preserve their allegiance to the Spanish Crown, were to be deemed citizens of Porto Rico, and they and citizens of the United States residing in Porto Rico were constituted a body politic under the name of The People of Porto Rico.*

Gonzales was a native inhabitant of Porto Rico and a Spanish subject, though not of the Peninsula, when the cession transferred her allegiance to the United States, and she was a citizen of Porto Rico under the act. And there was nothing expressed in the act, nor reasonably to be implied therefrom, to indicate the intention of Congress that citizens of Porto Rico should be considered as aliens, and the right of free access denied to them.

Counsel for the Government contends that the test of Gonzales' rights was citizenship of the United States and not alienage. We do not think so, and, on the contrary, are of opinion that if Gonzales were not an alien within the act of 1891, the order below was erroneous.

Conceding to counsel that the general terms "alien," "citizen," "subject," are not absolutely inclusive, or completely comprehensive, and that, therefore, neither of the numerous definitions of the term "alien" is necessarily controlling, we, nevertheless, cannot concede, in view of the language of the treaty and of the act of April 12, 1900, that the word "alien," as used in the act of 1891, embraces the citizens of Porto Rico.

We are not required to discuss the power of Congress in the premises; or the contention of Gonzales' counsel that the cession of Porto Rico accomplished the naturalization of its people; or that of Commissioner Degetau, in his excellent argument as *amicus curiæ*, that a citizen of Porto Rico, under the act of 1900, is necessarily a citizen of the United States. The question is the narrow one whether Gonzales was an alien within the meaning of that term as used in the act of 1891.

The act excludes from admission into the United States, "in accordance with the existing acts regulating immigration other than those concerning

*Sections 7, 9, 14 and 16 were as follows:

"SEC. 7. That all inhabitants continuing to reside therein who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in Porto Rico, and their children born subsequent thereto, shall be deemed and held to be citizens of Porto Rico, and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain on or before the eleventh day of April, nineteen hundred, in accordance with the provisions of the treaty of peace between the United States and Spain entered into on the eleventh day of April, eighteen hundred and ninety-nine; and they, together with such citizens of the United States as may reside in Porto Rico, shall constitute a body politic under the name of The People of Porto Rico, with governmental powers as hereinafter conferred, and with power to sue and be sued as such."

"SEC. 9. That the Commissioner of Navigation shall make such regulations, subject to the approval of the Secretary of the Treasury, as he may deem expe-

Chinese laborers," certain classes of "aliens" of "alien immigrants" arriving at any place within the United States, in respect of all of whom it is required that the commanding officer and agents of the vessel by which they come shall report the name, nationality, last residence and destination before any are landed.

The decisions of the inspection officers adverse to the right to land are made final unless an appeal is taken to the Superintendent of Immigration, whose action is subject to review by the Secretary of the Treasury; and all aliens who unlawfully come into the United States in violation of law shall be immediately, if practicable, sent back, or may be returned as by law provided.

We think it clear that the act relates to foreigners as respects this country, to persons owing allegiance to a foreign government, and citizens or subjects thereof; and that citizens of Porto Rico, whose permanent allegiance is due to the United States; who live in the peace of the dominion of the United States; the organic law of whose domicil was enacted by the United States, and is enforced through officials sworn to support the Constitution of the United States, are not "aliens," and upon their arrival by water at the ports of our mainland are not "alien immigrants," within the intent and meaning of the act of 1891.

Indeed instead of the immigration laws operating externally and adversely to the citizens of Porto Rico, they were themselves put in force and effect there by section 14 of the act of April 12, 1900, as the Secretary of the Treasury was advised by the acting Attorney General, July 15, 1902, in respect of the act "to regulate immigration," approved August 3, 1882, 22 Stat. 214, c. 376; 24 Op. 86. The act provided for the collec-

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dient for the nationalization of all vessels owned by the inhabitants of Porto Rico on the eleventh day of April, eighteen hundred and ninety-nine, and which continued to be so owned up to the date of such nationalization, and for the admission of the same to all the benefits of the coasting trade of the United States; and the coasting trade between Porto Rico and the United States shall be regulated in accordance with the provisions of law applicable to such trade between any two great coasting districts of the United States."

"SEC. 14. That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal revenue laws, which, in view of the provisions of section three, shall not have force and effect in Porto Rico."

"SEC. 16. That all judicial process shall run in the name of 'United States of America, ss: the President of the United States,' and all criminal or penal prosecutions in the local courts shall be conducted in the name and by the authority of 'The People of Porto Rico;' and all officials authorized by this act shall before entering upon the duties of their respective offices take an oath to support the Constitution of the United States and the laws of Porto Rico."

tion of "a duty of fifty cents for each and every passenger not a citizen of the United States who shall come by steam or sail vessel from a foreign port to any port within the United States. . . . The money thus collected shall be paid into the United States Treasury, and shall constitute a fund to be called the immigrant fund, and shall be used, under the direction of the Secretary of the Treasury, to defray the expenses of regulating immigration under this act, . . ."

By section 2 inspection was provided for, "and if on such examination there shall be found among such passengers any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge, they shall report the same in writing to the collector of such port, and such persons shall not be permitted to land."

The department held that the duty collected in Porto Rican ports should be accounted for and credited to the "immigrant fund," as is done with collections upon alien passengers arriving at ports in the United States.

In *Huus* v. *New York & Porto Rico Steamship Company*, 182 U. S. 392, 396, we held that by section 9 of the act of April 12, 1900, "it was evidently intended, not only to nationalize all Porto Rican vessels as vessels of the United States, and to admit them to the benefits of their coasting trade, but to place Porto Rico substantially upon the coast of the United States, and vessels engaged in trade between that island and the continent, as engaged in the coasting trade."

Again, in respect of paragraph 703 of the tariff act of July 24, 1897, (30 Stat. 203, c. 11,) exempting "works of art, the production of American artists residing temporarily abroad," the Department of Justice held that Mr. Molinas, a native of Porto Rico, and an artist, temporarily living in Biarritz, France, and there on April 11, 1899, became, under section 7 of the act of April 12, 1900, a citizen of Porto Rico, and as such an American artist entitled to the privileges of that paragraph. 24 Op. 40.

The Attorney General, in his communication to the Secretary of the Treasury, among other things, said: "It will be observed that paragraph 703 above quoted does not mention citizenship, but uses the phrase 'American artists.' It is clearly not inconceivable for a man to be an American artist within the meaning of such a statute and yet not be a citizen of the United States." And after commenting on the effect of the temporary absence of Mr. Molinas at the time the treaty was proclaimed, the Attorney General concluded his opinion thus: "But even in supposing that a native Porto Rican like Mr. Molinas, temporarily absent at the date of the treaty, has been unintentionally omitted from section 7, he is undoubtedly one of those turned over to the United States by Article IX of the treaty to belong to our nationality. He is also clearly a Porto Rican; that is to say, a permanent inhabitant of that island, which was also turned over by Spain to the United States. As his country became a domestic country and ceased

to be a foreign country within the meaning of the tariff act above referred to, and has now been fully organized as a country of the United States by the Foraker act, it seems to me that he has become an American, notwithstanding such supposed omission."

The Attorney General applied the ruling in *De Lima* v. *Bidwell*, 182 U. S. 1, that "with the ratification of the treaty of peace between the United States and Spain, April 11, 1899, the island of Porto Rico ceased to be a 'foreign country' within the meaning of the tariff laws."

In that case we were all of opinion that the action was properly brought, because as the question was whether the goods were imported at all the case did not fall within the customs administrative act. *In re Fassett, Petitioner*, 142 U. S. 479.

And in the present case, as Gonzales did not come within the act of 1891, the commissioner had no jurisdiction to detain and deport her by deciding the mere question of law to the contrary; and she was not obliged to resort to the Superintendent or the Secretary.

Our conclusion is not affected by the provision in the Sundry Civil Act of August 18, 1894, 28 Stat. 372, 390, c. 301, in relation to the finality of the decisions of the appropriate immigration or custom officers, or the similar provision in the act "to regulate the immigration of aliens into the United States," approved March 3, 1903, 32 Stat. 1213 c. 1012. The latter act was approved after the Gonzales litigation was moved, but it is worthy of notice that the words "United States" as used in the title and throughout the act were required to be construed to mean "the United States and any waters, territory or other place now subject to the jurisdiction thereof." § 33. The definition indicates the view of Congress on the general subject.

Gonzales was not a passenger from a foreign port, and was a passenger "from territory or other place" subject to the jurisdiction of the United States.

In order to dispose of the case in hand, we do not find it necessary to review the Chinese exclusion acts and the decisions of this court thereunder.

Final order reversed and cause remanded with a direction to discharge Gonzales.

True copy.

Test:

Clerk Supreme Court, U. S.